



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 14, 1996

Ms. Lan Nguyen
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR96-1459

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100057.

The City of Houston (the "city") received a request for "the names and any other pertinent information of the responsible parties for the recent fire at 1201 White Street," which implicates offense and investigation reports involving several adults and juveniles. You state that you will make available to the requestor some of the requested information regarding the incident, however, you seek to withhold the remaining records. You submitted to this office for review these records and assert that the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Specifically, you assert that the requested information is excepted from required public disclosure under section 58.007 of the Family Code, as information made confidential by law.¹ Section 58.007 appears to track many of the provisions of former section 51.14, but it omits the language in former section 51.14(d) that "law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public." Family Code section 58.007(e) reads as follows:

¹The Seventy-fourth Legislature replaced section 51.14(d) concerning juvenile criminal records with section 58.007 of the Family Code. This provision applies only to conduct occurring on or after January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 106, 1995 Tex. Gen. Laws 2517, 2591. See generally Open Records Decision No. 644 (1996).

Law enforcement records and files concerning a child may be inspected by a juvenile justice agency as that term is defined by Section 58.101 and a criminal justice agency as that term is defined by Section 411.082, Government Code.

This office recently construed this provision and concluded that the records of juvenile offenders concerning conduct occurring on or after January 1, 1996, that are held by law enforcement agencies are not made confidential under section 58.007 of the Family Code. *See* Open Records Decision No. 644 (1996) at 4. While section 58.007 restricts disclosure for records and files of a juvenile court, a clerk of court, a juvenile probation department, and a prosecuting attorney relating to a child, it does not contain a confidentiality provision that restricts access to juvenile law enforcement records and files in the hands of a law enforcement agency. Although section 58.007(e) provides that law enforcement records concerning juveniles "may" be inspected by a juvenile or criminal justice agency, the provision contains no restriction that limits inspection only to these two types of agencies. Consequently, the city may not withhold the submitted records concerning juvenile conduct occurring on or after January 1, 1996 pursuant to Family Code section 58.007 in conjunction with section 552.101 of the Government Code, since the records are not made confidential.

However, you also argue that the information at issue is excepted from disclosure under section 552.108 of the Government Code, which may except the requested information from disclosure. Section 552.108 of the Government Code, sometimes referred to as the "law enforcement" exception, provides as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

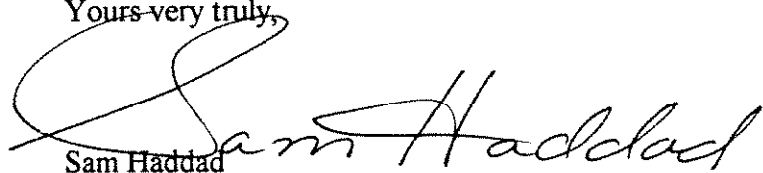
You inform us that the requested information pertains to pending criminal investigations. Additionally, you have submitted an affidavit from a Senior Investigator from the city's Fire Department which attests that the documents sought are related to a law enforcement investigation under Arson Case No. 96-0779-J, which has been referred to the 314th Family Juvenile District Court, Harris County, Texas. This office has previously acknowledged that the records of arson investigation units of city fire departments constitute "law-enforcement" records. *See, e.g.,* Open Records Decision No. 127 (1976) at 8. We have examined the information at issue and conclude that although you may not withhold the reports pursuant to Family Code section 58.007, you may withhold those reports under section 552.108. *See Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996

WL 325601 (June 14, 1996). Therefore, pursuant to section 552.108, you may withhold the submitted records irrespective of whether juvenile conduct was involved.

We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. We note that Section 552.108 is discretionary with the governmental entity asserting the exception and, therefore, you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref: ID# 100057

Enclosures: Submitted documents

cc: Mr. F. Wade Haughton
Sealy Real Estate Services, Inc.
2900 North Loop West Suite 550
Houston, Texas 77092
(w/o enclosures)

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.